

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JOSEPH LUBECK, <i>et al.</i>,)	CASE NO. 1:19-cv-00748-MRB
)	
Plaintiffs,)	JUDGE MICHAEL R. BARRETT
)	
v.)	
)	ORDER GRANTING DEFAULT
EMERGENT NETWORK DEFENSE,)	JUDGMENT
INC.)	
)	
Defendant.)	

This matter came on to be heard upon the Motion for Default Judgment (Doc. 5) filed by Plaintiffs Joseph Lubeck, Michael Denberg, and Diane Denberg (collectively “Plaintiffs”) against Defendant Emergent Network Defense, Inc. The Court set the matter for hearing on December 2, 2019 at 2:30 p.m. (Notice of Hearing on Motion dated 11/25/2019). At the Court’s instruction, counsel for Plaintiffs served both a copy of the Motion, as well as the Notice of Hearing, on Defendant and Defendant’s agent via federal express on November 25, 2019. (Doc. 6). Defendant did not appear at the December 2 hearing. However, Mr. Newell Crane appeared instead, representing himself to be Defendant’s founder and largest shareholder. Mr. Crane, who is not a lawyer, advised the Court that he came to the hearing, at the behest of Defendant’s Board of Directors, to request a delay in the proceedings because Defendant’s attorney was unavailable.

After hearing from counsel for Plaintiffs on the merits of their Motion, the Court stated from the bench that grounds for default judgment—and damages figures to date—had been sufficiently established. Nonetheless, the Court set a status conference by telephone for December 5, 2019 at 10:00 a.m. to allow counsel for Defendant to appear and show cause why default judgment ought not be granted. At that conference, attorney Jacob Rhode of KMK Law made a limited appearance on behalf of Defendant, and the matter was continued to December 6, 2019 at

2:00 p.m. During the December 6 status conference by telephone, attorney Michael Scheier of KMK Law advised the Court that his firm would not be entering an appearance on behalf of Defendant.

Based upon review of the docket, including the Complaint and its attachments, as well as Plaintiffs' Motion and its attachment and considering the argument of counsel during the December 2 hearing, the Court concludes that Plaintiffs' Motion (Doc. 5) is well-taken and, accordingly, is hereby **GRANTED**.

The Complaint in this civil action was filed on September 9, 2019. (Doc. 1). A Waiver of the Service of Summons was returned executed and filed with the Court on October 7, 2019, requiring Defendant to answer or otherwise respond by November 8, 2019. (Doc. 2). Defendant did neither. On November 13, 2019, pursuant to Fed. R. Civ. P. 55(a), Plaintiffs filed an Application for Entry of Default against Defendant. (Doc. 3). The Clerk of Court then entered default against Defendant on November 19, 2019. (Doc. 4). Plaintiffs' Motion for Default Judgment followed the next day, to which the Affidavit of Tracy Johnson is attached. Mr. Johnson's Affidavit sets forth these facts regarding the amount of damages:

- 1) Plaintiff Joseph Lubeck has sustained damages with respect to Count I in the principal amount of \$762,500.00, plus interest in the amount of \$154,178.82 as of December 6, 2019, for a total of award of compensatory damages of \$916,678.82;
- 2) Plaintiffs Michael Denberg and Diane Denberg have sustained damages with respect to Count II in the principal amount of \$200,000.00, plus interest in the amount of \$36,194.44 as of December 6, 2019, for a total of award of compensatory damages of \$236,194.44; and
- 3) Plaintiff Michael Denberg has sustained damages with respect to Count III in the principal amount of \$37,500.00, plus interest in the amount of \$12,182.29 as of December 6, 2019, for a total of award of compensatory damages of \$49,682.29.

IT IS THEREFORE ORDERED that default judgment is entered in favor of Plaintiff Joseph Lubeck and against Defendant, with respect to Count I of the Complaint, and compensatory damages are hereby awarded in the amount of \$916,678.82, plus post-judgment interest.

IT IS FURTHER ORDERED that default judgment is entered in favor of Plaintiffs Michael and Diane Denberg and against Defendant, with respect to Count II of the Complaint, and compensatory damages are hereby awarded in the amount of \$236,194.44, plus post-judgment interest.

IT IS FURTHER ORDERED that default judgment is entered in favor of Plaintiff Michael Denberg and against Defendant, with respect to Count III of the Complaint, and compensatory damages are hereby awarded in the amount of \$49,682.29, plus post-judgment interest.

IT IS FURTHER ORDERED that costs in the amount of \$400.00 shall be taxed against Defendant.

This Court retains jurisdiction over this civil action to enforce this judgment.

IT IS SO ORDERED.

/s/ Michael R. Barrett
Michael R. Barrett, Judge
United States District Court